



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

DATE: May 10, 2001

ITEM 3 – PUBLIC HEARING: Consideration of Implementation of Administrative Enforcement Actions Against California Mine ID #91-33-0003, Painted Hills Mine; Whitewater Rock and Supply Company, Operator; in the City of Desert Hot Springs; for Failure to Provide Evidence of Adequate Financial Assurance

BACKGROUND: At its regular business meeting on March 8, 2001 the State Mining and Geology Board (SMGB) issued an Order Imposing Corrective Measures and Administrative Penalty against the Painted Hills Mine. The basis of the Order was the mine's failure to provide evidence of adequate financial assurance in the form of a financial assurance cost estimate. The operator of the mine, immediately prior to the March 8th meeting, increased the financial assurance instrument from \$43,000 to \$50,000; however, the basis for determining that this new amount is adequate was not provided.

One week before the SMGB meeting on April 12, 2001, the operator submitted a financial assurance cost estimate worksheet; however, SMGB staff did not have time to review the adequacy of the cost estimate prior to the meeting. At the SMGB's April 12th regular business meeting, the SMGB requested, following its review of the estimate, that the estimate be clarified to address the following items:

1. Grading – using the figures supplied of 20,000 cubic yards of material to be graded for a cost of \$19,200, this calculates to be approximately 96 cents per cubic yard. This figure appears conservative; most grading costs are in excess of \$1.25 per cubic yard depending on the material type. Also, the operator should indicate the type of material to be graded, and whether final grades and fills will need to meet UBC standards for engineered features according to City codes.
2. Monitoring – although "visitation" costs are addressed, there should be a "maintenance" cost applied; that is, some contingency funds should be established to perform maintenance work on the revegetation if performance measures are not being met.

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3. Revegetation – Line items addressing the following should be considered: (a) water for dust control; (b) water and water lines for hydro-seeding activities and for irrigation of vegetation; (c) drainage and sediment control facilities. Current estimates indicate that hydro-seeding costs are less than 3 cents per square foot; this figure appears conservative and should be better justified or recalculated.

The SMGB determined to postpone action on implementing its March 8, 2001 Order until its May 10, 2001 meeting so as to afford the operator the opportunity to address these additional items in its estimate.

Pursuant to Public Resources Code § 2774.1(b) the Order issued by the SMGB does not become effective until the SMGB conducts a public hearing, at which time it may set an Effective Date of the Order.

EFFECTIVE DATE OF ORDER: The Order provides that the operator submit a complete financial assurance cost estimate to the SMGB not later than 5:00 P. M. on April 23, 2001, at which time a daily administrative penalty is triggered.

The SMGB should amend its Order to set the Effective Date of the Order to be May 10, 2001 which is the extension date offered by the SMGB at its April 12th meeting. This extends the compliance time for the operator by 17 days. By letter dated April 18, 2001 (sent by facsimile and surface mail) the operator was apprised of this change in proposed Effective Date.

ACTIONS OF THE BOARD: (1) The SMGB should amend the Effective Date of the Order to May 10, 2001 in accordance with its wishes at the April 12th meeting, or to some later date of its choosing; and, (2) If the SMGB believes that an adequately calculated financial assurance cost estimate was not submitted to the SMGB by May 10, 2001 then the SMGB should impose the daily administrative penalty portion of the Order, effective from May 10, 2001.

PROPOSED MOTION LANGUAGE:

1. *Mr. Chairman, I move that the Board amend its Order of March 8, 2001 to change the Effective Date from 5:00 P. M. April 23, 2001 to be 5:00 P. M. May 10, 2001. [Motion may be for any other later date];*
2. [If the Board finds the financial assurance estimate is not adequate]

Mr. Chairman, I move that the Board find that the financial assurance cost estimate submitted in response to the Board's Order of March 8, 2001 is not adequate for the following reasons:

[LIST REASONS]

and that the Administrative Penalty in the amount of \$200 per day be assessed commencing from this date and continuing each day until the conditions of paragraph 1 of this Order, as amended, are met.

3. [If the Board finds that the financial assurance cost estimate is adequate]

Mr. Chairman, I move that the Board find that the financial assurance cost estimate is timely submitted in response to the Board's Order of March 8, 2001 and is adequate to address the requirements of the operator's approved reclamation plan. The operator is to be notified within 15 days to submit a financial assurance instrument in accordance with Public Resources Code § 2773.1 and California Code of Regulations § 3803 made payable to both the State Mining and Geology Board and the Department of Conservation. The financial assurance instrument is to be received by the Board not later than July 1, 2001.

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